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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

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Dear Mr. Caton:

On behalf of KUSK, Inc., there are transmitted herewith an original and five copies of the Comments of KUSK, Inc. in connection with the Fourth Further Notice of Proposed Rule Making and the Third Notice of Inquiry in MM Docket No. 87-268.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Very truly yours,



Brian M. Madden

Enclosure
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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

MM Docket No. 87-268

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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To: The Commission

COMMENTS OF KUSK, INC.

KUSK, Inc. ("KUSK"), licensee of television broadcast Station KUSK-TV, Channel 7, Prescott, Arizona, and, in its own name or through affiliates, the operator or licensee of low-power television Station KHSK-LP, Phoenix, Arizona, and television translator Stations K30DT, Channel 30, Flagstaff, Arizona; K17BU, Channel 17, Mesa, Arizona; K43CO, Channel 43, Casa Grande, Arizona; K55EH, Channel 55, Phoenix, Arizona; K19CX, Channel 19, Yuma, Arizona; K17DA, Channel 17, Lake Havasu City, Arizona; K55GG, Channel 55, Kingman, Arizona; K23BY, Scottsdale, Arizona; and K29DK, Channel 29, Williams, Arizona, hereby comments on the Commission's above-captioned *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry in MM Docket 87-268*, FCC 95-315 (released August 9, 1995) ("*Fourth Further Notice*").

As the licensee of an LPTV station and the licensee or operator of numerous translator stations located in lesser populated areas of Arizona, KUSK provides an Arizona-based television service to rural communities which would otherwise be deprived of local coverage and, in some instances, would receive little or no over-the-air television transmission service. The distribution of translator facilities enables KUSK to reach substantial areas across much of Arizona, where the localized operation of Station KUSK(TV) has become very popular, especially among older

viewers in the state. Although KUSK acknowledges that LPTV and television translator operations have been established by the Commission as "secondary" services to supplement conventional "full-service" television station coverage, KUSK urges that, in implementing rules for advanced television ("ATV") service, the Commission should give special consideration to the public interest imperatives for maintaining existing television service to the greatest extent possible and avoiding substantial dislocation of service to current viewers, especially those in less populated areas of the United States.

I. The Commission Should Accommodate LPTV/Translator Licensees that Currently Provide Service to Rural Consumers to Ensure Continued Service to Their Communities

The implementation of ATV will undoubtedly provide special benefits to all television viewers, including viewers residing in rural areas. However, it is the case that less populated areas are likely to suffer the greatest harm from efforts to expedite the implementation of ATV. Rather than increasing service and programming choice to currently underserved locales, the rapid transition to ATV, with the reservation of secondary channels for each "full service" television station, may well result in the extinction of localized, over-the-air service now available solely through translator and LPTV stations in hundreds of small communities, located well beyond the coverage areas of conventional stations and too remote and too small to be cost effective for cable television service. Moreover, in many of these small communities, residents are unable or unlikely to move quickly to replace current receivers with ATV-ready equipment. Therefore, in the ATV proceeding the Commission should take steps to mitigate the likelihood and effects of displacement to the greatest extent possible consistent with its public interest objectives.

In the *Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making ("Third Report/Further Notice")*, the Commission reiterated its belief that LPTV has a role in the Commission's regulatory approach to ATV. *Third Report/Further Notice*, 7 FCC Rcd 6924, 6953 (1992), citing *Second Report and Order/Further Notice of Proposed Rule Making in MM Docket No. 87-268*, 7 FCC Rcd 3340, 3351 (1992) ("*Second Report/Further Notice*"). The Commission stated that LPTV stations will continue to be permitted to operate until a displacing full-service ATV station is operational. *Third Report/Further Notice*, 7 FCC Rcd at 6953. In addition, the Commission stated that in rural or small markets, substitute LPTV channels are likely to be available, and LPTV stations displaced by a full-service station will therefore be permitted to apply for a suitable replacement channel in the same area. *Third Report/Further Notice*. Further, LPTV licensees will be permitted to apply for ATV channels when the initial three-year eligibility restriction is lifted. *Id.* at 6955.

While KUSK is well aware that the Commission believes that insufficient spectrum exists to provide initial ATV eligibility to LPTV/translator licensees or to factor in LPTV/translator displacement considerations in making ATV assignments, KUSK urges that the Commission consider available options which may minimize the negative impact that LPTV/translator licensees -- and the communities they serve -- will face as a result of the transition to ATV by providing such licensees with alternatives to permit uninterrupted service to rural consumers. For instance, the advancements in the technology of digital transmission should provide the Commission with alternatives which would permit the continued provision of localized service by LPTV and translator stations, while at the same time providing the additional spectrum needed during the transition period from NTSC to ATV broadcasting.

In this regard, in the *Fourth Further Notice* the Commission stated that digital encoding and transmission technology has evolved and matured to the point that it will both permit the broadcast of a high definition television signal over a 6 Mhz channel *and* allow for an array of additional alternative uses. *Fourth Further Notice*, ¶ 4. In fact, the digital system developed by the Grand Alliance, the seven companies and institutions who have joined together to develop a final digital ATV system standard, will reportedly allow for more applications and alternative uses than previously contemplated by the Commission, including the provision by a single broadcaster of one HDTV service, several SDTV services, as well as several non-broadcast services either alone or in combination with broadcast services. *Fourth Further Notice*, ¶¶ 16-19.

In the *Fourth Further Notice*, the Commission requested comment on what limits should be placed on full-service broadcasters' use of the ATV channel. *Fourth Further Notice*, ¶ 23. In reaching its ultimate decision on this question, the Commission should consider the public interest in allowing the operators of LPTV and translator stations to continue to serve discrete, rural and minority communities and to formulate standards for full-service ATV use which enables the preservation of service to the greatest extent possible, whether through the reservation of SDTV capacity or through the elimination or modification of the channel separation "taboos" to give effect to improved transmission and receiver selectivity made possible by digital technology.

II. The Commission Should Maintain Its Commitment to Provide LPTV and Translator Broadcasters with Longer Transition Schedules to Convert to ATV Operation

In the *Third Report/Further Notice*, the Commission determined that requiring LPTV stations to convert to ATV at the same time that full-service broadcast stations are required to

convert, as contemplated in the *Second Report/Further Notice*, would overly burden LPTV licensees since many such licensees are small, community-oriented enterprises. *Third Report/Further Notice*, 7 FCC Rcd at 6955. Therefore, the Commission agreed to adopt a flexible approach permitting LPTV broadcasters to broadcast in either the ATV or NTSC mode and to convert to ATV in response to local demand, rather than on a date certain. *Id.* In the *Fourth Further Notice*, however, the Commission requested comment on whether it should adopt an objective benchmark to determine when broadcasters should cease NTSC transmission, such as the percentage of households in a market that continue to rely on NTSC transmission. *Fourth Further Notice*, ¶¶ 50-54. The Commission also requested comment on whether stations in small markets, stations in economically disadvantaged areas, or stations making a showing of financial hardship should be treated differently with respect to the implementation schedule for ATV. *Id.* at ¶¶ 66-69. The *Fourth Further Notice*, however, did not address the applicability of any new benchmarks adopted to LPTV or translator broadcasters.

In this regard, KUSK supports the Commission's decision in the *Third Report/Further Notice* to permit LPTV and translator facilities to convert to ATV in response to local demand. It would be exceptionally unreasonable to require an LPTV or translator licensee to undertake the large capital outlay required to purchase and construct an ATV system on the same schedule that full-service television licensees are required to convert, particularly in light of the attendant uncertainty resulting from LPTV's status as a "secondary" service. Further, if the Commission should adopt a different implementation schedule for stations in small markets or in economically disadvantaged areas, KUSK urges the Commission to provide similar treatment to LPTV and translator licensees, as these conditions typify the communities served by many LPTV and translator operations.

III. Conclusion

KUSK submits that, in acting to achieve its goal of preserving a free, universal broadcasting service and fostering an expeditious and orderly transition to digital technology, the Commission must consider the public interest demands for maintaining existing service to the greatest extent possible and avoiding substantial dislocation of service to existing viewers in less populated areas of the United States. Recent developments in digital technology provide the Commission with the means to maintain existing localized service currently provided to residents of rural areas by LPTV and translator licensees, while at the same time providing full-service broadcasters with an unprecedented number of service alternatives.

Respectfully submitted,

KUSK, INC.

By: William H. Sauro
William H. Sauro
President

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